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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 20 1997

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Petition of Southwestern Bell Telephone Company, )  
Pacific Bell and Nevada Bell )  
Concerning Rules to Deter the Unauthorized )  
Changes of Consumers' Long Distance Carriers )

**PETITION FOR RULEMAKING**

Southwestern Bell Telephone Company (SWBT), Pacific Bell and Nevada Bell (Petitioners) hereby petition the Federal Communications Commission (Commission) to take action immediately to reduce the unacceptably high incidence of slamming. Such action should include the issuance of a Notice of Proposed Rulemaking (NPRM)<sup>1</sup> proposing rules to implement Section 258 of the Telecommunications Act of 1996 (the Act), and the imposition of severe fines or penalties on egregious "slammers."

The term "slamming" is used to describe the unauthorized switching of an end user's Presubscribed Interexchange Carrier (PIC) by an interexchange carrier (IXC).<sup>2</sup> Since 1985, when equal access and presubscription became available, end user slamming has become a significant problem, which the FCC has attempted through various means to curb. Among other means, the

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<sup>1</sup> On June 4, 1997, Comments were filed in response to MCI's petition for rulemaking (CCB/CPD Docket No. 97-19) regarding PIC "freezes." Several parties, including the Petitioners, indicated that the Commission should initiate a broad rulemaking to address the slamming issue. As shown herein, slamming has increased significantly and must be addressed in a timely manner.

<sup>2</sup> While this petition addresses only the issue of the PIC slamming, slamming likely will also be a problem in the local service arena.

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FCC has prescribed verification procedures for IXC's who are submitting PIC change orders on behalf of end users,<sup>3</sup> issued specific requirements for the content and form of the letter of authorization (LOA) that an IXC obtains from an end user,<sup>4</sup> and fined IXC's in certain instances for slamming.<sup>5</sup>

Unfortunately, slamming has continued unabated, causing serious imposition and much frustration and confusion for customers. In an attempt to demonstrate the extent of the slamming problem, Petitioners have attached to this petition certain slamming statistics specific to SWBT and Pacific Bell.

Attachments 1 and 2 show the number of PIC change orders received by SWBT and Pacific Bell per month and annually from IXC's during 1995 (over 12 million), 1996 (over 14 million) and 1997 (over 5 million to date); the number of IXC-submitted changes disputed by end users;<sup>6</sup> the percentage of PIC changes disputed by end users; and the percentage of PIC disputes for which the IXC was unable or chose not to provide a valid end user authorization. These figures also show that

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<sup>3</sup> In the Matter of Policies and Rules Concerning Changing Long Distance Carriers, CC Docket No. 91-64, Report and Order, released January 9, 1992.

<sup>4</sup> In the Matter of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Report and Order (R&O), released June 14, 1995. An LOA authorizes the IXC to submit a PIC change order to a LEC on behalf of an end user.

<sup>5</sup> On January 23, 1996, for example, the Commission released five Notices of Apparent Liability for Forfeiture for alleged violation of the Commission's slamming rules, against Home Owners Long Distance, Inc. (File No. ENF-95-05, NAL/Acct. No. 616EF005); Nationwide Long Distance, Inc. (File No. ENF-96-03, NAL/Acct. No. 616EF003); MCI Telecommunications Corp. (File No. ENF-96-01, NAL/Acct. No. 616EF001); AT&T Corporation (File No. ENF-96-06, NAL/Acct. No. 616EF006); and Target Telecom, Inc. (File No. ENF-96-04, NAL/Acct. No. 616EF004).

<sup>6</sup> In its June 1995 R&O, the Commission revised its rules to discourage deceptive LOAs. As shown in the attachments, however, Petitioners did not experience a perceptible decrease in PIC disputes after the new rules took effect.

Petitioners handle over 575,000 PIC disputes per year, and that only a small fraction of these PIC disputes are resolved by the IXC actually producing a valid end user authorization.

The incidence of slamming in the United States as a whole far surpasses that shown by Petitioners' figures. The Fall 1996 edition of the Commission's Common Carrier Scorecard indicates that slamming was the top consumer complaint category handled by the Enforcement Division's Consumer Protection Branch in 1995.<sup>7</sup> Attachments 3 and 4 show the number of slamming complaints<sup>8</sup> that SWBT and Pacific Bell received each month during calendar years 1995, 1996 and the first quarter of 1997. In many cases, the end user actually took the time not only to call the LEC to dispute the PIC change, but also to write this Commission or the state commission to complain about having been slammed. In 1995, SWBT and Pacific Bell received an average of 220 slamming complaints per month and in 1996 the average number of slamming complaints increased to 279 per month. This trend evidences the growing problem and demonstrates that the existing rules designed to prevent slamming are ineffective.

In addition to inconveniencing the customer, the investigation and resolution of each of these complaints entails significant expense and administrative burden for the local exchange carrier (LEC). The LECs, which process the PIC change orders, are placed in an extremely untenable position with respect to the customer, and incur significant costs and demands on their resources.<sup>9</sup>

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<sup>7</sup> The volume of slamming complaints in 1995 was more than triple the volume in 1994. In fact, the Common Carrier Scorecard states that in 1995, "the number of slamming complaints rose faster than any other single category until it comprised one-third of all complaints handled by the Branch."

<sup>8</sup> The complaints include "executive" complaints and complaints to the state and federal commissions. Executive and state commission complaints can be either verbal or written, whereas the FCC complaints are virtually all written.

<sup>9</sup> During 1996, SWBT expended over 125,000 hours handling PIC change disputes and  
(continued...)

Because the number of IXC-submitted PIC change orders is so large, LECs must accept and process such change orders without investigating their validity. When an end user contends that he or she has been slammed, the LEC must be responsive to the customer, while trying to determine whether the customer had indeed authorized the IXC to submit a PIC change on the customer's behalf. Customers often do not understand the LEC's role in processing the PIC changes, particularly when the LEC performs billing and collection for the IXC that has slammed.

Besides handling end user disputes and complaints, LECs have been embroiled in litigation involving slamming. For example, SWBT recently was named as a defendant in a class action suit, which alleges unauthorized switching of plaintiffs' PICs.<sup>10</sup> The majority of defendants in this lawsuit are IXCs, but certain LECs, including SWBT, also have been named as defendants on the grounds that they switched the end user's PIC when requested by an IXC to do so. Defending this lawsuit will require the expenditure of substantial time and money by SWBT, which is simply caught in the middle.

Clearly, something further must be done to reduce slamming. Petitioners suggest that removal of the economic incentive to slam is the best mechanism to discourage and prevent it, and urge the Commission immediately to implement two measures to accomplish this. First, the Commission should promulgate rules implementing Section 258 of the Act. The Commission must take action now to enforce the Act. Second, the Commission should formalize and levy severe fines and penalties upon slammers.

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<sup>9</sup>(...continued)  
slamming complaints.

<sup>10</sup> Castellano, et al., v. Southwestern Bell Telephone Co., et al., No. 96 CH 1725, Circuit Court of Cook County, Illinois County Department, Chancery Division.

Section 258 of the Act provides as follows:

- (a) Prohibition. -- No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.
- (b) Liability for Charges - Any telecommunications carrier that violates the verification procedures described in subsection (a) and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the Commission may prescribe. The remedies provided by this subsection are in addition to any other remedies available by law.

The Commission should adopt procedures under which the end user's valid PIC is reimbursed by the slamming carrier in an amount equal to all charges paid by the end user to the slamming carrier during the period that the end user was slammed. The slamming carrier should also be responsible for any PIC change charges and any associated legal fees incurred by the end user, the valid PIC and the LEC.

In addition, the Commission should increase and expand its practice of finding egregious slammers apparently liable for forfeiture, for the willful and repeated violation of the Commission's rules on PIC changes. The Commission should adopt a method of determining on a regular basis the carriers that have engaged excessively in slamming, and impose substantial fines on these carriers. For example, the Commission could use data shown in its Common Carrier Scorecard, which contains a graph displaying Slamming Complaint Ratios for Long Distance Companies With 100 or More Total Complaints for 1995. Alternatively, the Commission could require LECs to

submit periodic reports showing the number of PIC change orders submitted by each carrier, and the percentage disputed by end users.

Using such data, the Commission could adopt a procedure of imposing substantial fines on carriers whose slamming complaints or percentage of end user disputes exceed a certain threshold level. The amount of the fine should increase significantly for repeat offenders and as the complaint ratio or percentage of end user disputes increases. The Commission should impose the fines on an established schedule, such as quarterly. By finding apparent liability only where the complaints or disputes are above a certain threshold, the Commission will take into account that end user PIC disputes and complaints do not automatically establish that the IXC has engaged in slamming. In some instances, for example, the disputed PIC change may have been due to "innocent mistake" on the part of the carrier.<sup>11</sup>

If these procedures prove ineffective in deterring the carrier from slamming, more stringent penalties should be adopted. For example, repeat offenders could be placed on probation for a specific period of time (i.e., one year). During that period the carrier would not be permitted to submit any additional PIC changes. As a final measure, the carrier could be suspended from providing service to all existing customers for a period of time to be determined by the Commission based on the severity of the violation.

In conclusion, Petitioners strongly urge the Commission to take further action to deter slamming as prescribed by the Act. The proposals contained in this petition would remove the economic incentive to slam and should prove to be an effective deterrent. The Commission should

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<sup>11</sup> An example of an "innocent mistake" may be when a carrier obtains authorization for a PIC change from one spouse, and the other spouse does not want the PIC changed. This may appear on a LEC's report as an end user dispute of a PIC change, but it does not constitute willful slamming.

issue an NPRM proposing rules to implement Section 258 of the Act, and should establish procedures for the imposition of substantial, regular forfeitures on egregious slammers. Until the Commission implements procedures such as these, slamming will continue unabated.

Respectfully submitted,

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ATTORNEY FOR PACIFIC BELL  
AND NEVADA BELL

June 20, 1997

**SOUTHWESTERN BELL**

1995 PIC DISPUTE ACTIVITY													
	Jan	Feb*	Mar*	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
# PIC Changes Processed	464,298	519,556	554,134	527,662	558,075	479,314	546,539	565,767	523,158	521,348	453,030	518,128	6,231,009
# PIC Change Disputes	29,280	44,826	30,938	24,526	26,723	26,927	32,084	26,691	33,790	34,099	24,544	27,313	361,741
% PIC Change Disputes	6.3%	8.6%	5.6%	4.6%	4.8%	5.6%	5.9%	4.7%	6.5%	6.5%	5.4%	5.3%	5.8%
% PIC Change Disputes (excluding valid LOAs received)	6.2%	8.5%	5.4%	4.4%	4.7%	5.4%	5.8%	4.5%	6.4%	6.5%	5.3%	5.2%	5.7%
*NOTE: Programming error inflated the actual number of PIC disputes received; the error began on 2/6/95 and was corrected on 3/7/95; February and March PIC dispute totals are distorted.													



**SOUTHWESTERN BELL**

**1996 PIC DISPUTE ACTIVITY**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
# PIC Changes Processed	580,495	529,500	677,486	701,693	607,982	666,039	651,452	575,781	591,050	605,383	551,610	532,939	7,271,410
# PIC Change Disputes	32,051	28,911	32,028	28,455	29,134	30,432	34,739	36,515	33,693	34,204	32,662	25,387	378,211
% PIC Change Disputes	5.5%	5.5%	4.7%	4.1%	4.8%	4.6%	5.3%	6.3%	5.7%	5.6%	5.9%	4.8%	5.2%
% PIC Change Disputes (excluding valid LOAs received)	5.5%	5.5%	4.7%	4.0%	4.8%	4.5%	5.3%	6.3%	5.7%	5.6%	5.9%	4.7%	5.2%

**SOUTHWESTERN BELL**

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**PACIFIC BELL**

1995 PIC DISPUTE ACTIVITY													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
# PIC Changes Processed	381,501	501,054	424,251	530,615	540,428	509,955	514,637	560,159	514,018	524,716	534,356	541,450	6,077,140
# PIC Change Disputes	13,166	16,988	16,015	14,229	21,781	16,311	16,415	20,299	20,296	21,048	20,268	21,364	218,180
% PIC Change Disputes	3.5%	3.4%	3.8%	2.7%	4.0%	3.2%	3.2%	3.6%	3.9%	4.0%	3.8%	3.9%	3.6%
% PIC Change Disputes (excluding valid LOAs received)	3.4%	3.3%	3.7%	2.6%	3.9%	3.1%	3.1%	3.5%	3.9%	3.9%	3.7%	3.9%	3.5%

# PACIFIC BELL

1996 PIC DISPUTE ACTIVITY													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
# PIC Changes Processed	533,575	543,150	549,352	577,727	583,533	590,933	642,994	577,334	590,784	596,013	568,793	470,673	6,824,861
# PIC Change Disputes	21,874	21,183	23,428	24,154	23,805	17,850	16,177	21,165	19,599	20,064	17,914	15,728	242,941
% PIC Change Disputes	4.1%	3.9%	4.3%	4.2%	4.1%	3.0%	2.5%	3.7%	3.3%	3.4%	3.1%	3.3%	3.6%
% PIC Change Disputes (excluding valid LOAs received)	4.1%	3.9%	4.3%	4.1%	4.0%	3.0%	2.5%	3.6%	3.2%	3.3%	3.1%	3.2%	3.5%

**PACIFIC BELL**

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## Slamming Complaints Report

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**SOUTHWESTERN BELL**  
**Slamming Complaints Report**

Total Slamming Complaints													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Total - 1995	77	68	42	94	85	114	78	152	106	103	106	103	1128
Total - 1996	83	89	107	59	115	124	127	233	285	143	82	150	1597
Total - 1997	166	287	89	-	-	-	-	-	-	-	-	-	542
% change over previous year	100%	222%	-17%	-37%	35%	9%	63%	53%	169%	39%	-23%	46%	-
FCC Slamming Complaints													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
FCC - 1995	53	48	29	24	78	110	54	104	80	51	78	69	778
FCC - 1996	50	63	87	35	104	99	87	195	235	73	61	42	1131
FCC - 1997	134	272	47	-	-	-	-	-	-	-	-	-	453
% change over previous year	168%	332%	-46%	46%	33%	-10%	61%	88%	194%	43%	-22%	-39%	-

## Slamming Complaints Report

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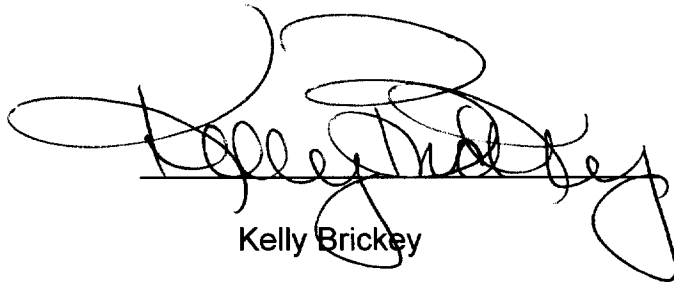


**PACIFIC BELL**  
**Slamming Complaints Report**

Total Slamming Complaints													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Total - 1995	84	142	125	140	246	155	117	110	69	133	112	74	1,507
Total - 1996	30	84	146	88	133	134	141	287	91	350	105	161	1,750
Total - 1997	159	304	74	-	-	-	-	-	-	-	-	-	537
% change over previous year	430%	262%	-49%	-37%	-46%	-14%	21%	170%	32%	163%	-6%	118%	-
FCC Slamming Complaints													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
FCC - 1995	54	91	54	85	192	112	89	86	43	87	97	67	1,057
FCC - 1996	22	67	124	64	114	122	120	262	73	323	85	146	1,522
FCC - 1997	139	291	57	-	-	-	-	-	-	-	-	-	487
% change over previous year	532%	334%	-54%	-25%	-41%	9%	35%	205%	70%	271%	-12%	118%	-

**CERTIFICATE OF SERVICE**

I, Kelly Brickey, hereby certify that the foregoing "Petition for Rulemaking", has been served June 20, 1997, to the Parties of Record.



Kelly Brickey

June 20, 1997

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